

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NEW MEXICO CATTLE GROWERS
ASSOCIATION, *et al.*,

Plaintiffs,

v.

UNITED STATES FOREST SERVICE, *et al.*,

Federal Defendants.

Case No. 1:23-cv-150-JB-GBW

DECLARATION OF CAMILLE HOWES

I, Camille Howes, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby declare as follows:

1. I am employed by the United States Department of Agriculture, Forest Service, (“USFS”), and have been a USFS employee since May 24, 2021. I have served as the Forest Supervisor for the Gila National Forest in New Mexico from August 15, 2022, to present. As Forest Supervisor, I am responsible for administering use of National Forest System lands and managing the use and protection of resources located on those lands, including the Gila Wilderness Area, within the boundaries of the Gila National Forest.
2. I make this declaration on personal knowledge and a review of the records regularly maintained by the USFS and available to me in the course of official business.
3. Since the late 1990s, the Forest Service has estimated that there were approximately 200-250 feral cattle living and roaming freely within the Gila Wilderness.

The problem began when a previous permittee on what was an active grazing allotment in the area filed for bankruptcy in the 1970s and left the country, leaving his cattle on the National Forest. A successor permittee took possession of the abandoned cattle, but was unable to gather or manage a large portion of the cattle. The grazing permit was suspended in 1996 and canceled in 1998, but many of the cattle remained in the area. No grazing has been authorized in the area since the permit suspension in 1996.

4. These cattle have become feral in nature, breeding and increasing their numbers in the decades since being abandoned. These are not domesticated cattle. The Forest Service has not identified any tags or brands indicating ownership of these cattle.
5. In September 2021 a gather contract was issued to a contractor for live removal of feral cattle from the Gila Wilderness. Between October 2021 and December 2022, the contractor removed 31 feral cattle alive from the Gila Wilderness. An additional 39 feral cattle perished or were injured and euthanized during gathering operations. All feral cattle removed alive were inspected by a New Mexico Livestock Board Brand Inspector and, if they passed inspection, were sold at public sale to the highest bidder. Feral cattle that died or were euthanized during gather operations were left in the wilderness to naturally decompose. None of the inspected cattle removed through those operations were branded (example, project record #215 Brand Inspection Report).¹ Additionally, photo documentation of feral cattle that perished or were euthanized during gathering efforts also confirm the cattle were unbranded (example, project record #209 Carcasses Documentation).

¹ Citations herein to the “Project Record” are documents that will be part of Federal Defendants’ Administrative Record for this litigation. For purposes of responding to Plaintiffs’ motion for emergency relief, select documents from the Project Record are attached as exhibits to this declaration where noted.

6. On February 10 and 11, 2022, APHIS Wildlife Services conducted aerial shooting via helicopter and lethally removed 65 feral cattle in the Gila Wilderness. During these operations, APHIS personnel did not identify any branded, tagged, or otherwise marked livestock among the feral cattle targeted. After the lethal removal operation, the New Mexico Livestock Board Inspector for Grant County entered the area to inspect the carcasses, but did not report that any of the animals were branded or showed any signs of ownership. Following the lethal removal efforts, two unbranded bulls were reported to the U.S. Forest Service located in or near the Gila River. Forest Service personnel promptly removed those cows from the river.
7. Contract gathering of feral cattle is an expensive and time-consuming process. Operations under the September 2021 gather contract lasted fifteen months and cost the Forest Service \$301,840. By comparison, aerial lethal removal operations are more efficient both in terms of costs and time. The two-day operation in February 2022 resulted in lethal removal of 65 feral cows and cost the Forest Service. \$38,996.
8. There are no active grazing allotments or private ranching lands in the project area where aerial shooting occurred in February 2022. The area of operation for 2023 is identical to the 2022 area of operations. No livestock are authorized to be present in this area. Of the allotments named in the Complaint, ECF No. 1, and Plaintiffs' Application for Temporary Restraining Order and Preliminary Injunction, ECF No. 6, none are located adjacent to or even close to the area where aerial shooting will take place. The Spur Lake Allotment, associated with Plaintiffs Spur Lake Cattle Company and its president Nelson Shirley, *see id.* ¶ 14, is located 60 miles from the area of operations; the T Bar allotment, also associated with Plaintiff Nelson Shirley, *see* ECF No. 6-2 ¶ 3, is 15.7 miles from the edge of operations.
9. After APHIS Wildlife Services completed aerial feral cattle removal operations in the Gila

Wilderness in February 2022, the Acting Forest Supervisor for the Gila National Forest executed an official memorandum stating that “[a]ctions under the September 11, 2020 Decision Memo have been completed and no further actions shall be conducted under this decision.”

10. On September 12, 2022 I invited a variety of stakeholders with different perspectives and backgrounds to a facilitated discussion on the issue of feral cattle in the Gila Wilderness (project record #232 Collaborative Meeting Agenda). Invitees included members from several environmental and conservation organizations, livestock groups, the New Mexico Livestock Board, and private citizens (project record #234 Invitee List). All those in attendance agreed that the feral cattle should be removed from the Gila Wilderness, but had different opinions on the appropriate removal method (project record #233 Meeting Discussion Audio Recording).
11. On November 1, 2022, I sent a letter to Loren Patterson (president of the New Mexico Cattlegrowers’ Association) and Belinda Garland (executive director for the New Mexico Livestock Board) requesting that they provide financial and/or technical assistance if they were interested in helping to resolve the Gila Wilderness feral cattle issue (project record #238, 239 Assistance Request Letters). No response was received by the Forest from either entity.
12. During November and December 2022, I continued to hold meetings to discuss the feral cattle issue with various stakeholders, including permittees, the New Mexico Livestock Board, the New Mexico Cattle Growers’ Association, and the Center for Biological Diversity.
13. On November 22, 2022, the Gila National Forest sent out a public scoping letter to a wide mailing list with a proposed action of using lethal and non-lethal methods to remove feral cattle from the Gila Wilderness (project record #249 Scoping Letter). The mailing lists included local, state, and federal governments, NGOs, livestock producer groups, every term grazing permittee

on the Gila National Forest, and private citizens (project record #279, 280 Mailing Lists). The scoping notice was sent to each of the Plaintiffs who participated in the 2002 lawsuit.

14. As part of the 2022 lawsuit, Federal Defendants entered into a stipulation of dismissal with Plaintiffs. The stipulation for dismissal noted that Plaintiffs and the public would receive at least 75 days' notice prior to any aerial lethal removal operations in the Gila Wilderness before March 2025. On November 17, 2022 we provided notice of our intent to conduct such operations in February 2023 through the public scoping notice, *see* Ex. 2 herein, and on November 22, 2022 we also mailed a notice letter to Plaintiffs' counsel (the Budd-Falen Law Office) with the public scoping notice as an attachment (project record #265 Budd-Falen Law Office Notice Letter), attached herein as Ex. 4, 75-Day Notice Letter.
15. To fulfill our commitments for government-to-government consultation, the Gila National Forest sent letters to 14 different Tribal governments requesting consultation on the proposed action to removal feral cattle from the Gila Wilderness (project record #241 Tribal Government Mailing List). Responses received from Tribal governments did not express any concern or opposition to the proposed action (example, project record #434 Tribal Response Letter).
16. The New Mexico Cattlegrowers' Association submitted a comment letter on November 30, 2023 (project record #305 Comment Letter), suggested that, rather than lethal removal efforts, the Forest Service should reconstruct a corral system in the Gila Wilderness. This alternative was dismissed from further consideration for several reasons, which are addressed in detail Appendix B of the Decision Memo. *See* Ex. 1 herein, Decision Memo, App'x B (Response to Comments). At bottom, construction of corrals within the Gila Wilderness would be considered construction of installations in designated wilderness, which would affect the Wilderness character of the area require additional environmental review, and would also not effectively

achieve the Forest Service's goal of removing all feral cattle in the Wilderness since the proposal was to build corrals along the Gila River, but information provided by APHIS during February 2022 and by the gather contractor in 2021 indicates not all feral cattle gather along the Gila River during dry months. Turkey Creek, Miller Springs, and other perennial water sources provide feral cattle with water during dry periods outside the Gila River corridor, and the elevational relief (approximately 2,500 feet) between the Gila River corridor and the higher country where many feral cattle are located precludes herding animals from those higher locations to corrals along the Gila River.

17. On December 6, 2022, District Rangers Henry Provencio and Elizabeth Toney briefed the Grant County Board of Commissioners at the Commission's monthly business meeting on the Gila National Forest's proposal to use a combination of lethal and non-lethal methods to remove feral cattle from the Gila Wilderness (project record #336 Meeting Summary Email). Subsequently, on December 22nd, the Grant County Board of Commissioners submitted a joint resolution to the Gila National Forest supporting the proposed action (project record #437 Grant County Commissioners Joint Resolution).
18. As part of an effort to allow for greater public involvement into Gila National Forest matters, I started a monthly "Coffee with Camille" event where members of the public may attend an in-person listening session to discuss any matter they wish with Gila National Forest leadership. I held listening sessions on December 15, 2022 and January 19, 2023. The Gila Wilderness feral cattle issue dominated the conversation during both sessions.
19. On January 9, 2023, the public scoping comment period closed for the Gila Wilderness Feral Cattle Removal project. Several comments were received after this date and were incorporated into the project record. We received 5,973 comments, of which 5,547 consisted of three different

form letters. Ninety-three percent (93%) of the comments (including all form letters) supported the Forest's proposed action to use lethal and non-lethal methods to remove feral cattle. Plaintiffs Allen Campbell and Humane Farming Association did not submit scoping comments for consideration during the public scoping period. The Forest Service heard about their objections for the first time today, when Plaintiffs filed their Complaint and Application for a Temporary Restraining Order and Preliminary Injunction.

20. Issues raised by the public during scoping covered multiple topics, all of which the U.S. Forest Service addressed in the Decision Memo (project record #788 Decision Memo), Ex. 1 herein, Decision Memo; the Response to Comments (project record #790 Response to Comments), Ex. 1, App'x B; and with supporting documentation in the project record.
21. On February 1, 2023, I requested concurrence from the U.S. Fish and Wildlife Service through informal consultation that the proposed action would not jeopardize the experimental population of Mexican wolves in New Mexico (project record #749, 753 Biological Assessment for Mexican Wolves). On February 10, 2023 I received a letter from the U.S. Fish and Wildlife Service concurring with our determination (project record #776 Concurrence Letter).
22. On February 1, 2023, in accordance with 36 C.F.R. § 262.10, I signed an impoundment notice requesting removal of any unauthorized livestock from the project area. Since no livestock are authorized in the project area, any domesticated cattle in the project area would be unauthorized. *See* Ex 3 herein, Notice of Intent to Impound Unauthorized Livestock. This notice to the public stated that the Forest Service may impound and dispose of any unauthorized cattle found within the specified area of the Gila Wilderness any time after February 15, 2023, and up to one year from date of the notice. *Id.* The impoundment notice was mailed to every term grazing permittee on the Gila National Forest and was posted at the Grant County courthouse, at several

community post offices, at Ranger District offices, and in the Silver City Daily Press from February 3 to February 17 (example, project record #758 Display Ad for Impoundment Notice).

No permittee or other livestock owner has contacted the U.S. Forest Service as a result of the impoundment notice indicating they may have branded livestock in the impoundment area.

23. Some livestock producers have expressed concern that branded cattle could have strayed into the Gila Wilderness over the last year, due to fences and water gaps that were damaged during an unusually strong monsoon season and prior fires. The Region and Forest are committed to continued efforts toward collaborative solutions and will continue to coordinate with permittees in their efforts to locate, gather, and remove their branded cattle from areas where they are not authorized.
24. Plaintiff Nelson Shirley recently contacted U.S. Forest Service staff and indicated that he is attempting to retrieve some of his branded cattle that escaped during round up efforts in November. Mr. Shirley indicated the cattle are within the Gila Wilderness in Cooper Canyon. Cooper Canyon is located approximately 3 miles southeast of the Willow Creek trailhead access point on the northern boundary of the Gila Wilderness. Cooper Canyon is still 13 miles away from the northern edge of the project boundary and is separated by the same very remote, very rugged topography. It is thus extremely unlikely that any of Mr. Shirley's livestock have wandered from his T Bar Allotment to the project area.
25. On February 14, 2023, I signed an area closure order for the Gila Wilderness to protect public safety (project record #783). The closure order went into effect on February 20, 2023, at 8:00 AM and will remain in effect until March 15, 2023 at 12:00 AM unless rescinded sooner.
26. On February 16, 2023, I signed the Decision Memo authorizing the use of lethal and non-lethal methods to remove the remaining population of feral cattle from the Gila Wilderness. *See Ex.*

1, herein. Based on the public comments received, the external and internal conversations the Forest Service has conducted over the last several years, and the supporting information provided in the project record, I strongly feel this is the right decision to properly steward the landscape within the Gila Wilderness.

27. A U.S. Forest Service press release (project record #808 Decision Press Release) was distributed announcing this decision. Further, individuals who submitted comments during the public scoping period were notified as well (project record #787 Decision Cover Letter). The U.S. Forest Service Regional Office and Gila National Forest reached out to a broad network of stakeholders, local and state government officials, and county sheriffs ahead of the public release of the decision to provide a courtesy notice that a decision was signed (project record #804 Communications Plan).
28. APHIS Wildlife Services will conduct lethal removal through aerial operations from February 23 – February 26, 2023. The U.S. Forest Service is closely coordinating operational logistics with APHIS Wildlife Services for this operation.
29. Several stakeholders, including Mr. Nelson Shirley, have expressed concern that branded cattle could be within the project area and may be subject to lethal removal efforts. Mr. Shirley holds a term grazing permit on the Gila National Forest for the Spur Lake and T Bar Allotments. As mentioned above, the Spur Lake Allotment is in the northwest corner of the Gila National Forest and is approximately 60 miles from the project area. The T Bar Allotment borders the northern boundary of the Gila Wilderness and approximately 15 miles from the northern boundary of the project area. Additionally, between the northern project boundary and the T Bar Allotment lies very remote, very rugged topography including several large canyons. It is therefore very unlikely that any of Mr. Shirley's branded cattle have wandered into the project area and will

be mistaken for feral cattle and lethally removed.

30. There are several term grazing permittees who hold permits to graze allotments that are closer to the project area than Mr. Shirley's allotments. Those allotments that border the southern boundary of the Gila Wilderness are only several miles from the project area. However, over the years Gila National Forest staff have had conversations with these permittees (Spar Canyon, Cow Creek, and Reading Mountain Allotments) about feral cattle removal efforts, and these permittees have not expressed concern over their branded cattle wandering into the project area nor have they expressed concern over the Gila National Forest's efforts to remove feral cattle through lethal or non-lethal means. In fact, these permittees have expressed concern over feral cattle intermixing with their branded livestock and potentially transmitting disease, since feral cattle are not vaccinated.
31. The Redstone Allotment is partially within the southeastern portion of the project area. The Redstone Allotment is the original source of feral cattle in the Gila Wilderness. Currently, the Redstone Allotment is vacant although one pasture of the Redstone Allotment is used intermittently by the Cow Creek Allotment permittee in exchange for not using a pasture on the Cow Creek Allotment that borders the Gila River. This agreement was reached by the permittee and Gila National Forest to prevent permitted cattle on the Cow Creek Allotment from using the Gila River riparian area. The XSX Allotment is partially within the eastern portion of the project area. Most pastures on the XSX Allotment are closed to grazing (including those pastures within the project area). One pasture on the XSX Allotment outside the project area and outside of the Gila Wilderness is used every third year.
32. There are no active grazing allotments or private ranching lands in the project area. Thus, any privately owned livestock in the project area would not be authorized to be in that location, and

owners of the trespass livestock could be found to be in violation of the prohibition at 36 C.F.R. § 261.7(a). Nonetheless, if by chance any branded or otherwise identifiably owned cattle are inadvertently removed during aerial shooting efforts, the owner would be able to seek reimbursement from the Forest Service for the market value of that cattle. The Gila National Forest will assist them in filing administrative claims with the Forest Service under the Federal Torts Claims Act. To date, no such claims have been filed nor has anyone approached the Forest Service seeking help in filing a claim.

33. Several commenters during public scoping expressed concern over lethal operations leaving feral cattle carcasses in or adjacent to water sources and contaminating water quality. This concern is thoroughly addressed in the Decision Memo, Exhibit 1; the Response to Comments, Exhibit 1, App'x B; and in the project record (project record #752 Watershed Specialist Report). As noted in the Decision Memo, a mitigation measure has been put in place to remove any cattle carcass that may end up in or adjacent to a waterbody, trail, or culturally sensitive location. APHIS will fly the river corridor at the end of each day of operations to inspect for any cattle carcasses that may have ended up in the river. Moreover, cattle and other wildlife die of natural causes every day, and sometimes they perish next to or adjacent to waterbodies. Rarely are these carcasses detected before they decompose and even more rarely are they removed from the water. This is a primary reason why proper backcountry etiquette strongly recommends treating water before consumption. Still, as indicated previously, feral cattle carcasses that end up next to or within a waterbody during this lethal removal action will be promptly removed from that area. Most importantly, the impact of repeated, chronic use and congregating of live, feral cattle next to water sources year-round, year after year has had a much greater impact on riparian resources within the Gila Wilderness. Waste byproducts from cattle are a source of fecal

contamination and a continual source of contamination when cattle congregate next to water sources, which they will continue to do so long as they continue to live freely and reproduce in the Gila Wilderness.

34. Regarding the timing of operations, it is critical that lethal removal activities through aerial operations take place in February. First, vegetative cover is reduced at this time of year from leaf fall, thus improving visibility of feral cattle from the air and improving the efficiency of operations. Second, sport hunting seasons on the Gila National Forest typically run from September through January, thus operating in February would not conflict with sport hunters or guide/outfitter operations catering to sport hunters in the Wilderness. In March when many schools and universities begin their spring semester spring break, the Gila National Forest and especially the Continental Divide Trail, which traverses the Gila National Forest, sees a large influx of hikers and backcountry campers. While the Continental Divide Trail does not traverse the project area, wilderness use in the project area does increase noticeably during this time. And, especially in years with adequate snowpack, rafting the Gila River through the Gila Wilderness (and the project area) is a popular activity in March and April during peak snowmelt which allows for adequate river flows. Recreational use of the Gila Wilderness remains high into the summer months. When monsoonal rains begin in late June / early July, vegetation begins a new growing season and aerial visibility is once again greatly reduced until leaf fall.
35. Some commenters also expressed concern about the availability of feral cattle carcasses influencing Mexican gray wolf behavior. This topic has been thoroughly addressed in the in the Decision Memo, Exhibit 1; the Response to Comments, Exhibit 1, App'x B; and in the project record (record #749 Mexican Gray Wolf Biological Assessment). During the 2022 lawsuit, Plaintiffs argued that term grazing permittees are required to remove the cattle carcasses from

their allotments. This claim is false. There is no requirement stated in a permittee's annual operating instructions, in the allotment management plan, or as part of U.S. Forest Service regulations, policy, or handbook direction requiring permittees to remove cattle carcasses from their allotments. Further, this is not a requirement for term grazing permittees on Bureau of Land Management lands in New Mexico either (project record #748 BLM Cattle Carcass Disposition Email). The U.S. Fish and Wildlife Service Interagency Field Team (IFT) which oversees management of the Mexican gray wolf recovery program may work with individual permittees to remove carcasses where depredation is a concern, but this is done through a mutual working agreement between the permittee and IFT staff. In recent years, the U.S. Forest Service has received requests from environmental organizations to require permittee removal of cattle carcasses. With support from permittees, the U.S. Forest Service has not made cattle carcass removal a requirement.

36. The February 2023 lethal removal through aerial operations is planned for February 23, 2023 through February 26, 2023. Whatever cattle carcasses are available for scavengers, including Mexican gray wolves, will become available over the course of four days—not continually for weeks or months. The carcasses will be available during one window following operations, and will then cease to exist as a result of scavenging and natural decomposition. As of 2021, there were an estimated 186 Mexican gray wolves across their entire range in Arizona and New Mexico. The size of the project area is a mere fraction of the overall range of Mexican gray wolves. While we acknowledge wolves may scavenge on a carcass of a feral cow, they will not find subsequent concentrations of feral cattle carcasses in the area following the operation, and will not be drawn to any live, domesticated cattle in the area since none are authorized to graze there. My conclusion that lethal removal operations will not affect Mexican gray wolf feeding

behavior is based on the professional assessment by the U.S. Forest Service and U.S. Fish and Wildlife Service wildlife biologists, including those of the IFT who are considered the Mexican gray wolf experts. Commenters who raised concerns over lethal removal efforts impacting wolves offered not one single source of information, not one scientific literature source, not one single expert opinion for the U.S. Forest Service to take into consideration during project analysis. Without any refuting information to take into consideration, I have relied on the expertise of wildlife biologists of the U.S. Forest Service and U.S. Fish and Wildlife Service as well as scientific literature supporting their assessments.

37. Of the named Plaintiffs in the February 21, 2023 Complaint: New Mexico Cattlegrowers Association, Spur Lake Cattle Company, Mr. Nelson Shirley, Mr. Allen Campbell, and Humane Farming Association, only c the New Mexico Cattlegrowers Association, Spur Lake Cattle Company and Mr. Nelson Shirley provided comments to the Forest Service on this proposed action during the public scoping period. Mr. Allen Campbell and the Humane Farming Association did not provide comments to the U.S. Forest Service regarding their concerns with the proposed action, nor did they recommend alternatives for consideration.
38. Mr. Allen Campbell alleges that the February 2022 lethal removal effort had an adverse impact on hikers using the Gila Hot Springs Campground. While the Gila Hot Springs Campground is located near the Gila Wilderness boundary, it is approximately 8.5 air miles from the eastern boundary of the area closure where lethal removal operations will be taking place in February 2023. Further, APHIS has indicated they will avoid conducting lethal removal operations over the Gila River corridor where Mr. Campbell has claimed campground users were impacted in February 2022.
39. I hereby certify that the documents attached to this declaration are true and correct copies of

official Forest Service records kept in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 22nd day of February, 2023.

Camille Howes
Forest Supervisor, Gila National Forest
USDA Forest Service